

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

MARC VEASEY, ET AL.,)	CASE NO: 2:13-CV-00193
)	
Plaintiffs,)	CIVIL
)	
vs.)	Corpus Christi, Texas
)	
RICK PERRY, ET AL.,)	Thursday, August 28, 2014
)	(10:00 a.m. to 10:26 a.m.)
Defendants.)	(10:26 a.m. to 10:44 a.m.)

STATUS CONFERENCE

(SEALED PORTION OMITTED)

BEFORE THE HONORABLE NELVA GONZALES RAMOS,
UNITED STATES DISTRICT JUDGE

Appearances: See Next Page

Court Recorder: Genay Rogan

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1 **Corpus Christi, Texas; Thursday, August 28, 2014; 10:00 a.m.**

2 **THE COURT:** All right. Good morning.

3 The Court calls Case Number 2-13-CV-193, *Veasey, et*
4 *al., versus Perry, et al.*

5 You had continued to discuss the matter of the
6 nonparty legislators' documents?

7 **MR. SCOTT:** We have, your Honor. And we've also,
8 thanks to Ms. London's herculean effort, which is greatly
9 appreciated by the State of Texas -- thank you very much on the
10 record -- we have been able to really narrow the scope of the
11 issues. But I think we have a couple of clarifications from
12 yesterday's record to make sure that the record is correct.

13 **MS. LONDON:** To make sure that the Bates number
14 issues are correct, I've prepared four exhibits. And Exhibit
15 Number 1 contains the Bates numbers for the documents that were
16 produced on June 24th, 2014, by the nonparty senators, Ellis,
17 Hinojosa, Rodriguez, Uresti, Watson, Whitmire, West, and
18 Zaffirini, that were produced without an assertion of privilege
19 or objection.

20 And those Bates numbers are contained on Exhibit
21 Number 1.

22 Exhibit Number 2 is a letter from Mr. Scott to myself
23 with the Bates numbers that are from the privilege log of the
24 documents that were -- where a privilege was asserted, and it
25 represents a hundred percent of the documents and their Bates

1 number that contained the total universe of the privilege
2 documents.

3 And the -- what the Court should note is that the
4 privilege documents that are listed here, the Bates numbers
5 have the word "PRIV" on them. And so a Rodney Ellis, for
6 example, privilege document would have "RE PRIV," and then the
7 number, which is to be distinguished from those on Exhibit
8 Number 1, which would just be Rodney Ellis, RE, and the number.

9 **THE COURT:** Okay.

10 **MS. LONDON:** And so Exhibit Number 2 is all of the
11 documents that were identified as privileged.

12 Pursuant to our argument of -- and Exhibit Number 2
13 reflects about 6,812 pages of documents that were -- privilege
14 was claimed.

15 Pursuant to our argument, the State identified the
16 documents out of the privilege log that they chose -- that they
17 intend to use, and that is contained on Exhibit Number 3, and
18 it is a two-page -- it's a double-sided document that reflects
19 about 800 pages that the State intends to use, and although the
20 Bates numbers are listed without the prefix "PRIV," we have an
21 agreement that it, in fact, refers to documents that are
22 privileged and should have the "PRIV."

23 And pursuant to the agreement, this is the total
24 universe of documents in Exhibit 3 that could be used at trial.

25 Exhibit Number 4, then, is a subset of documents that

1 were a subset of Exhibit 3 that are the documents that are
2 either being withdrawn for usage by the State or being
3 submitted to the Court to be ruled on.

4 And so this Exhibit Number 4 reflects a subset of
5 documents that, based on the Court's rulings or the fact that
6 the parties withdrew them, would be subtracted from Exhibit
7 Number 3.

8 And there are approximately 209 pages reflected on
9 Exhibit Number 4.

10 **MR. SCOTT:** Your Honor, that is correct, except with
11 one minor alteration. On Exhibit 4, included right now, though
12 I ask that it be scratched out is --

13 **MS. LONDON:** Well, it -- that's (indiscernible)

14 **MR. SCOTT:** -- one document.

15 **MS. LONDON:** Yes. Yes, that -- I would agree with
16 that.

17 **MR. SCOTT:** And so I'm going to scratch that out. Is
18 that okay?

19 **MS. LONDON:** That is correct.

20 **THE COURT:** So on Exhibit 4, it's documents -- the
21 200 pages or whatever -- it's documents that have been
22 withdrawn by the State, State is not interested in presenting
23 them anymore, and they're --

24 **MS. LONDON:** Or they have been submitted to the Court
25 for a ruling.

1 **THE COURT:** Right. But for my purposes, the only
2 thing that's going to be placed in the record under seal is
3 what I've looked at, and ruled on, and said is not coming in.

4 **MS. LONDON:** And that --

5 **MR. SCOTT:** That's correct.

6 **THE COURT:** Yes. Okay.

7 **MS. LONDON:** And I believe we will collaborate and
8 make sure we have an accurate group of documents to submit
9 under seal --

10 **THE COURT:** Okay.

11 **MS. LONDON:** -- that meet that --

12 **THE COURT:** Okay.

13 **MS. LONDON:** -- that requirement.

14 **THE COURT:** Very good.

15 **MR. SCOTT:** And so we're just going to do that
16 submission after we start trial --

17 **THE COURT:** Right.

18 **MR. SCOTT:** -- so that she's had an opportunity to
19 review those, and when you say we're ready to go, we'll --

20 **THE COURT:** Okay.

21 **MR. SCOTT:** -- make an offer of proof on those.

22 **THE COURT:** That's all that's coming in is what I've
23 looked at and ruled on.

24 **MR. SCOTT:** Yes, ma'am.

25 **THE COURT:** Yes.

1 **MS. LONDON:** Right.

2 **MR. SCOTT:** Yes, ma'am.

3 **THE COURT:** Okay.

4 **MS. LONDON:** And on Exhibit Number 4, as Mr. Scott
5 indicated, we have just crossed out JZ PRIV 000234 to 278.
6 That is a document that is not withdrawn by the State or ruled
7 on by the Court. We are putting it back into the 800 or so
8 pages that should be --

9 **MR. SCOTT:** Usable.

10 **MS. LONDON:** -- on the -- usable. And that's
11 reflected on Exhibit Number --

12 **THE COURT:** Okay.

13 **MS. LONDON:** -- 4. So --

14 **THE COURT:** That -- and those --

15 **MS. LONDON:** -- with Mr. Scott's --

16 **THE COURT:** -- are agreed to?

17 **MS. LONDON:** -- agreement, we'll submit these
18 exhibits to be admitted for this hearing. And for the Court's
19 benefit, if we start underneath the crossed out line, that will
20 give you the list of documents that we're looking at today.

21 **THE COURT:** Okay.

22 **MR. SCOTT:** Which is (indiscernible). And I'm going
23 to pass off to Mr. Tatum, your Honor.

24 **THE COURT:** All right. And you all -- is there,
25 like, a copy for me to look at of the -- these exhibits I need

1 to look at?

2 **MR. TATUM:** Yes, your Honor. Your Honor, if you'd
3 like, I can give you all of them that we're going to talk about
4 right here --

5 **MS. LONDON:** And I --

6 **THE COURT:** Sure.

7 **MR. TATUM:** -- in one fell swoop.

8 **MS. LONDON:** I need a copy as well.

9 **MR. TATUM:** Yeah, I've got one for you as well.

10 **THE COURT:** Okay.

11 **MS. LONDON:** Okay.

12 **THE COURT:** So this is the rest of the senators' --
13 let's see. Which senators does the -- what you just presented
14 to me, is this the rest? There were how many, six, that --

15 **MS. LONDON:** There are one, two, three, four, five,
16 six, seven, eight, nine, ten, eleven more documents --

17 **THE COURT:** Okay.

18 **MS. LONDON:** -- and that would be the completion of
19 Zaffirini, Senator Watson, Uresti, and Whitmire.

20 **THE COURT:** Okay. So this Exhibit 4 is what we're
21 dealing with under the --

22 **MS. LONDON:** Exactly.

23 **THE COURT:** -- marked-out portion, so -- okay. So
24 the first one, then, JZ Privilege 324 through 329, correct?

25 **MR. TATUM:** Yes, your Honor. And if I may, before we

1 go into these documents piecemeal, if I may make a quick
2 statement about what we'll be talking about here today?

3 Your Honor, as the Court has recognized, the motive
4 and intent of the Legislature that enacted SB 14 is the crux of
5 this case. And, in short, the -- it's Defendants' position
6 that the motive and intent of the -- of those legislatures who
7 have -- legislators who opposed SB 14, which motive and intent
8 is evidenced in the documents we're talking about today, is no
9 less relevant than the motive and intent of those legislators
10 who supported and enacted --

11 **THE COURT:** Okay. And how is that?

12 **MR. TATUM:** -- SB 14.

13 **THE COURT:** What is the State's position on how that
14 is as relevant?

15 **MR. TATUM:** Well, your Honor, first of all, the
16 reason that the legislators in question received subpoenas in
17 the first place was that, you know, each of them was directly
18 involved in both the creation and debate of SB 14. In fact,
19 some senators proposed amendments that were eventually adopted
20 into the language of SB 14. For instance, the substantially
21 similar language, I believe, was proposed by a democratic
22 legislator who eventually voted against the bill.

23 And, secondly, each of the legislators that received
24 subpoenas from us was identified by the Plaintiffs as a
25 potential witness with personal knowledge of SB 14 and the

1 motivations behind it.

2 And I believe that's telling that the Plaintiffs
3 themselves believed that these legislators had something to
4 offer in the way of the intent behind SB 14.

5 And if I may refer --

6 **THE COURT:** But was it their intent or the intent of
7 those who passed it that they were going to be testifying
8 about?

9 **MR. TATUM:** Defendants would argue that it's the
10 intent of the Legislature as a whole that produced SB 14.

11 And if I may, you know, a lot of the arguments --
12 I've kind of made a summation of the arguments that Defendants
13 have made in ECF Numbers 399 and 433. Those were our Responses
14 to Plaintiffs' Motion to Quash these documents.

15 So for further detail about this, I would refer the
16 Court to those documents.

17 And, in short, as we're going to cover today when we
18 go over these documents, we believe that the -- you know, the
19 footprints of these legislators that we're talking about, you
20 know, they're all over this bill, just the same as the
21 legislators who voted for it. And I think that's going to come
22 out as we go through these documents.

23 **THE COURT:** Okay. So we're looking at the first
24 bunch, 324 to 329, correct?

25 **MS. LONDON:** That's correct.

1 **MR. TATUM:** Yes, ma'am. And for the record -- and
2 you can correct me if I'm wrong -- Documents JZ PRIV 0000234 to
3 278, per our agreement, that will not be -- that is not
4 something that we'll be seeking the Court's ruling on. That
5 was previously listed, I believe, in material you might have
6 had yesterday, but we've talked about that one and agreed we're
7 not going to deal with that.

8 **THE COURT:** I'm sorry. Which numbers?

9 **MS. LONDON:** It's the one that's crossed out on --

10 **THE COURT:** Okay. Yes. Yes.

11 **MS. LONDON:** -- Exhibit Number 4.

12 **THE COURT:** Yes. We've moved on to --

13 **MR. TATUM:** Okay.

14 **THE COURT:** -- 324 to 329, correct?

15 **MR. TATUM:** Yes, ma'am.

16 **MS. LONDON:** Judge, this document, 324, is a document
17 out of Judith Zaffirini's file. And pertinent to what
18 Mr. Tatum has just told you, Judith Zaffirini has not been
19 identified as a witness who will testify in this trial either
20 by the Plaintiffs or the Defendants. So she will not be
21 testifying.

22 This is out of her file. It's dated March 10th,
23 2009, well before the enactment of Senate Bill 14. It is a
24 document from Harold Cook, which, as we established yesterday,
25 was the director of the Senate Caucus. And it reflects a

1 legislative, deliberative process that reflects Senator
2 Zaffirini's -- what she collected in order to make her choices
3 about how she was going to proceed in 2009.

4 I do not believe the State has established high
5 relevance to its case regarding the issues before the Court on
6 Senate Bill 14. It does not mention, as Mr. Tatum just
7 articulated, any of the amendments or any of the involvement in
8 Senate Bill 14. And it does not reflect on any of the motive
9 or intent related to the issues that are before the Court.

10 And on that basis, we would ask that this document --
11 the Protective Order be granted.

12 **THE COURT:** All right.

13 **MR. TATUM:** And, your Honor, this document was
14 created in relation to the iteration of SB 14 that immediately
15 preceded it. This was created in 2009, and so it's the
16 Defendants' position that this document is direct evidence and
17 highly relevant evidence of the intent of those legislators who
18 opposed a voter ID bill of any kind.

19 Everything in here, you know, the -- on the first
20 page there, they reference a plan -- that's something that pops
21 up a lot -- a concrete plan or strategy that was developed to
22 oppose a voter ID law. And, you know, that strategy -- if you
23 will picture a Newton's cradle, that strategy is directly
24 relevant to any strategy on the part of those who support SB
25 14. They're related. They interact with each other.

1 And so it's Defendants' position that this is direct
2 evidence, as those who oppose the bill, they're part of the
3 Legislature as one body who enacted SB 14, and this is a
4 strategy that we believe was probably evidence and probably
5 existent for -- during the enactment of SB 14. And just
6 because it's not -- it didn't appear during the Legislature
7 that enacted SB 14 doesn't make it any less relevant.

8 **THE COURT:** Okay. Anything else?

9 **(No audible response)**

10 The Court finds the documents before the Court, those
11 324 through 329, is protected by the legislative privilege, and
12 the Court doesn't find it highly relevant to issues before the
13 Court, so the Court will grant the Protective Order.

14 Okay. So we're 534 through 544?

15 **MR. TATUM:** Yes, your Honor.

16 **MS. LONDON:** Judge, this is a document that is an
17 e-mail from Ray Martinez, which is Judith Zaffirini's general
18 counsel, and as we discussed yesterday, makes it subject to the
19 attorney-client privilege. And he is passing on a memo from
20 Harold Cook, which we've previously identified as the director
21 for the Senate Caucus.

22 And we would assert the attorney-client privilege and
23 the legislative privilege as to these documents, and we would
24 maintain that, with regard to the legislative privilege, the
25 State cannot establish any relevance to any issue before the

1 Court.

2 **THE COURT:** Okay.

3 **MR. TATUM:** And, your Honor, I'd first like to point
4 out that this document was not listed as covered by the
5 attorney-client privilege in the privilege log that was
6 provided to us. It was only listed under a potential
7 legislative privilege.

8 I would also point out that this document was created
9 during the enactment -- or, I'm sorry -- just after the
10 enactment of SB 14. And, again, it references a strategy, a
11 plan, which directly relates to the intent of the legislators
12 who opposed SB 14, which, in Defendants' eyes, is highly
13 relevant to the --

14 **THE COURT:** Okay. And I guess I'm still not clear
15 exactly what the State is saying as to how their plan, their
16 intent, is relevant to what's before the Court starting next
17 week in that trial.

18 **MR. TATUM:** Yeah, well --

19 **THE COURT:** I mean, just kind of -- spell it out for
20 me.

21 **MR. TATUM:** Sure. Again, the motive and intent
22 behind the enactment of SB 14 is --

23 **THE COURT:** The enactment and the passing of that,
24 and this doesn't have to do with it being passed. They were
25 opposed.

1 **MR. TATUM:** Well --

2 **THE COURT:** And the issue -- Texas is now before this
3 Court because they passed this SB 14.

4 **MR. TATUM:** Yes, your --

5 **THE COURT:** So --

6 **MR. TATUM:** Yes, your Honor. And --

7 **MR. CLAY:** Your Honor, if I could make -- Reed Clay
8 for the State of Texas.

9 If I can make one point just to elaborate on what
10 Mr. Tatum had said?

11 What the Plaintiffs will want your Honor to do is
12 draw inferences from the actions of the people -- the
13 proponents of SB 14. The -- those inferences will be that they
14 acted with a racist intent, but what these documents show are
15 another explanation and help shed light on what the proponents
16 of SB 14 were doing.

17 It -- when you're looking -- in order to explain what
18 -- to fully explain what the proponents of SB 14 were doing,
19 you have to see what they were reacting to and what they were
20 responding to. These actions by opponents of SB 14 help
21 explain a different -- provide a different inference other than
22 the far-fetched inference that they were acting with a racial
23 or discriminatory intent.

24 And that's how they're relevant to explaining the
25 actions of the proponents of SB 14.

1 **THE COURT:** Okay.

2 **MS. LONDON:** And, Judge, if I can respond?

3 That's a theoretical argument. This document, JZ
4 Privilege 00534, is a document that is dated 2011. It is a
5 document that is confidential, and it cannot shed any light on
6 what the proponents of the bill were doing when they passed
7 Senate Bill 14, because they would not have known about it, and
8 it does not have to do with anything that happened.

9 It has to -- it just doesn't shed any light on what
10 they would theoretically like it to shed light on. They can't
11 point to any language in here that creates any information, nor
12 does it create any inference.

13 With regard to the procedural issue that Mr. Tatum
14 raised about the assertion of the attorney-client privilege, I
15 want to read into the record the agreement that brings us here
16 today. Paragraph 6 of the agreement with the State says:

17 "The senators will have the right to assert the
18 legislative privilege and any other objection to the
19 use of the document at the time of pretrial of the
20 above-referenced cause."

21 And so we have -- we maintain the right to assert any
22 objection or privilege; and if nothing else, we would snap back
23 this document, because it is attorney-client privilege.

24 **THE COURT:** I'm not going to pass on the attorney-
25 client privilege. The Court is just going to find it is

1 protected, same as the other document, by the legislative
2 privilege. The Court is going to grant the Protective Order
3 based on the relevance issue.

4 Okay. So we're on to the next one, which is 545
5 through 555.

6 **MS. LONDON:** Judge, this is an e-mail dated September
7 13th, 2011. It is from Harold Cook to Sondra Haltom, and
8 yesterday we identified Sondra Haltom as a Texas Democratic
9 Party employee.

10 And this is a document that, you can see from the
11 heading at the top of the page, was in -- was received -- or is
12 in Judith Zaffirini's file, and her e-mail. And, again, this
13 is part of her deliberative -- her legislative privilege per
14 her deliberative process, and it explains what she was doing in
15 making her decisions and her strategy.

16 And we assert the legislative privilege.

17 **THE COURT:** Okay.

18 **MR. TATUM:** And, again, your Honor, I would reference
19 language in this document that refers to a plan -- a
20 coordinated plan on the part of those who oppose SB 14,
21 particularly in quotes there, "everything but the kitchen sink,
22 objection letter, and reaction to the voter ID law."

23 Though that -- though this document was created after
24 the enactment and passage of SB 14, I think it's clear evidence
25 of the legislators who opposed it -- of their intent that

1 existed during that Legislature.

2 So for reasons already stated, Defendants believe
3 that this is a -- this is a highly relevant document, and would
4 ask that we be able to use it.

5 **THE COURT:** Same ruling. The Court finds it's
6 protected by the legislative privilege, and is going to grant
7 the Protective Order based on the relevance.

8 All right. Next? The list says, I believe, 745, but
9 I have two nine -- I have "KPW."

10 **MS. LONDON:** JZ PRIV 000745, I believe, has been
11 withdrawn by the State.

12 **THE COURT:** Okay.

13 **MS. LONDON:** They do not intend to use that document.

14 **THE COURT:** So we're moving on to 219 to 220 under
15 Watson?

16 **MR. TATUM:** Yes, your Honor.

17 **THE COURT:** Okay. What is this?

18 **MS. LONDON:** PRIV 000219 is an e-mail from Harold
19 Cook dated April 23rd, 2007. It is to Celinda Provost, who is
20 Senator Watson's chief of staff.

21 And this is his advice regarding an approach they
22 might take to Senate Bill 1467 that was proposed by Janet back
23 in 2007. And we would assert the legislative privilege and
24 suggest that it is not highly relevant.

25 **THE COURT:** All right.

1 **MR. TATUM:** Your Honor, this is from 2007. It,
2 again, directly relates to a previous iteration of SB 14. And
3 I think that emphasizes that the strategic plan held by those
4 who oppose a voter ID law was not created suddenly during the
5 enactment of SB 14. It's something that has existed for years.
6 Obviously, it's something that proponents of SB 14 would have
7 known about and would have considered in their enactment of --
8 drafting and enactment of SB 14.

9 And for that reason, Defendants believe that this is
10 relevant to the Legislature as a whole's intent in enacting SB
11 14; and, therefore, believe it's highly relevant.

12 **THE COURT:** Okay. Same ruling. The Court finds this
13 document is protected by the legislative privilege and will
14 grant the Protective Order based on the relevance.

15 Okay. Then 242 through 243.

16 **MS. LONDON:** Although KPW PRIV 00242 and 243 are
17 stapled together, I cannot represent to the Court necessarily
18 that they belong together, so let me address them separately.

19 PRIV 00242 is clearly a hard copy of an e-mail. We
20 know it's a hard copy because it's got handwriting all over it.
21 And so it was in Senator Watson's file as a hard copy. And it
22 is an e-mail that was in -- from -- part of it is from Steve
23 Scheibal to Harold Cook.

24 Steve Scheibal, for the record, is Kirk -- Senator
25 Watson's director of policy and communications, and so it is a

1 staff communication.

2 Harold Cook, within his e-mail, repeats an attorney's
3 advice, Gerry Hebert, who the Court is familiar with.

4 And so we are asserting a legislative privilege as to
5 this document and attorney-client privilege as to the portion
6 that refers to the advice given by Mr. Hebert.

7 And, again, we suggest that it does not show
8 relevance to any issue before the Court.

9 **THE COURT:** Okay.

10 **MR. TATUM:** And, your Honor, this is a document, as
11 Ms. London said, it's a hard copy. It was in a legislator's
12 file. We don't know who made the notes on here, the
13 handwritten notes I'm referring to. The source of those notes
14 is unclear, and yet the Plaintiffs would still like to withhold
15 this document under legislative privilege.

16 And I think I've covered all the reasons why we think
17 this is highly relevant as it pertains to the motive and intent
18 of SB 14.

19 Regarding the attorney-client privilege, with regard
20 to the e-mail there between Harold Cook and Steve Scheibal, the
21 -- I believe the attorney-client privilege is being asserted
22 based on a communication between Mr. Cook and Mr. Hebert, who's
23 referenced in that e-mail, but this is not a communication
24 between those two parties. It is simply an e-mail from
25 Mr. Cook --

1 **(Sealed portion omitted from 10:26:35 to 10:26:55 a.m.)**

2 **MR. TATUM:** -- you know, that -- in our view, this is
3 not a communication protected by the attorney-client privilege,
4 because that privilege was effectively pierced when Mr. Cook
5 communicated this content to Mr. Scheibal, who is not a party
6 to the original communication that's referenced there.

7 So we would argue that that e-mail is not protected
8 by the attorney-client privilege; and, furthermore, that this
9 document as a whole should not be protected by the legislative
10 privilege, given a number of problems with it, including the
11 fact that the source of the handwritten notes on there is
12 unclear.

13 **THE COURT:** The Court finds that it's protected by
14 the legislative privilege and grants a Protective Order.

15 **MS. LONDON:** And to the extent that Mr. Tatum has
16 read a portion of the e-mail into the record, we would ask that
17 that portion be sealed.

18 **THE COURT:** All right. Court orders it sealed.

19 Genay, are you -- are you clear on what needs to be
20 sealed?

21 **COURT RECORDER:** Yes.

22 **THE COURT:** Okay. And we need to address 243?
23 There's another one stapled to it as 533.

24 **MS. LONDON:** That should not be stapled --

25 **THE COURT:** Separate, okay.

1 **MS. LONDON:** That's a separate (indiscernible), so --

2 **MR. TATUM:** Yeah, that's the next one, your Honor.

3 **THE COURT:** So 243?

4 **MR. TATUM:** Yeah.

5 **THE COURT:** It's --

6 **MS. LONDON:** This is a document that I can represent
7 to the Court clearly came from Senator Watson's files. It is
8 clearly something in his file that reflects someone -- and it
9 may be -- it may be a continuation of the e-mail.

10 And so because the nature of it, we would assert the
11 legislative privilege, because it's in his file, it's part of
12 his work product, and clearly has no relevance to any issue
13 before the Court.

14 **THE COURT:** So we don't really even know who, or
15 what, or what this is?

16 **MS. LONDON:** We don't even know if it's related to
17 voter ID.

18 **MR. SCOTT:** It sounds like it was something in the
19 legislator's file, so we're kind of -- that's -- it's an
20 authorization problem, obviously, that we're going to run into
21 on this document. I don't --

22 **THE COURT:** Yeah, I --

23 **MR. SCOTT:** I think legislators end up with stuff in
24 their file and they don't know how it gets there.

25 **THE COURT:** Anyway, go ahead. Just go ahead if you

1 -- I'm just not sure -- I can't really figure out if that would
2 be protected by legislative history with the limit -- I mean --
3 you know, I keep wanting to say "legislative history" --
4 legislative privilege with the limited information before me.

5 I --

6 **MR. TATUM:** And --

7 **THE COURT:** -- don't know who, what --

8 **MR. TATUM:** And I -- and --

9 **THE COURT:** -- to see if it fits within the
10 parameters of the privilege.

11 **MR. TATUM:** And I don't think that this document is a
12 continuation of the previous one. I mean, obviously, it's up
13 in the air. This document is just kind of hanging there,
14 but --

15 **THE COURT:** Yeah, I don't think there's enough
16 information for the Court to make a finding that it's protected
17 by the legislative privilege. You know, I'm not sure how
18 you're going to bring this in, because what is it?

19 But --

20 **MS. LONDON:** In which case, then, my right to make
21 other objections, I would say this is not -- the subpoena
22 doesn't cover it, to the extent that it asks for documents that
23 pertain to voter ID.

24 And this document, although it may have been
25 physically in a file that says "voter ID," there's nothing that

1 really connects it to any of the voter ID legislation, and the
2 subpoena should not --

3 **THE COURT:** I --

4 **MS. LONDON:** -- reach to this document.

5 **THE COURT:** I think what I'd like to do at this point
6 -- I don't find it's protected by the legislative history.

7 I say we keep it sealed. When you -- when the
8 Defense wants to present it, I can deal with it then. I don't
9 know if we could get you --

10 **MS. LONDON:** The --

11 **THE COURT:** -- on the phone at that point, or --

12 **MS. LONDON:** That would be fine.

13 **THE COURT:** I just don't know how it's going to fit
14 into the picture and what is going to happen. But we'll keep
15 it sealed at this point.

16 **MR. SCOTT:** Well, and for the record, your Honor, if
17 they're not going to be able to authenticate that, that goes to
18 the heart of being able to get it introduced. I don't know how
19 we're going to get it --

20 **THE COURT:** Well, I know.

21 **MR. SCOTT:** -- authenticated --

22 **THE COURT:** That's what I'm saying. I don't know if
23 it's actually even going to come in initially for the Court,
24 but that's why I want to keep it sealed.

25 **MR. SCOTT:** Okay.

1 **THE COURT:** I don't think it's protected by the
2 legislative privilege, but I'm just a little concerned. So I'd
3 prefer to keep it sealed.

4 **MR. SCOTT:** Okay.

5 **THE COURT:** And if the State is going to use it, we
6 can address that again.

7 **MS. LONDON:** That gets us to KPW PRIV 000533, and
8 this is a March 6th, 2009, e-mail from Harold Cook to the
9 various staff members. Steve Scheibal is Senator Watson's
10 communications and policy director. And Harold Cook is simply
11 giving advice about a sign that the senators might post on
12 their committee walls, and giving them advice as part of their
13 legislative strategy.

14 So I assert the legislative privilege and suggest
15 that the State cannot meet a relevance to any issue before the
16 Court.

17 **THE COURT:** Okay.

18 **MR. TATUM:** Your Honor, to the extent that the
19 Legislature is not one body -- it would be that there's a
20 Senate and there's a House -- this document, again, produced in
21 relation to a previous iteration of SB 14 specifically
22 reference a message that the senators have been harping on;
23 that being, that the Senate has better things to do than voter
24 ID.

25 And I think that's clearly evidence of an intention

1 of the Senate as a whole, not necessarily those who support or
2 oppose SB 14.

3 And for that and other reasons that have already been
4 articulated, the State believes this is a highly relevant
5 document to the motive and intent behind the Legislature that
6 enacted SB 14.

7 **MS. LONDON:** I guess it goes without saying all the
8 Harold Cook documents, although he gave advice, there is never
9 any indication in these documents that anybody took his advice;
10 and as advice given, it has no relevance unless somebody
11 actually did something.

12 **THE COURT:** And the Court finds 533 of the Watson --
13 the Watson Document 533 is protected by the legislative
14 privilege and is going to grant the Protective Order.

15 Okay. So we're onto Uresti --

16 **MR. TATUM:** Yes, your Honor.

17 **THE COURT:** -- 32. Okay. What is that?

18 **MR. TATUM:** And by point of reference, your Honor, I
19 believe Senator Uresti has been designated to testify in this
20 case through Section 5 deposition testimony.

21 **THE COURT:** Okay. So what is this one?

22 **MS. LONDON:** CU PRIV 00032 is an e-mail from Sondra
23 Haltom, who we've identified as a Texas Democratic Party
24 person, to Harold Cook. And it has a CC to the staff members
25 of various senators. Jason Hassay, for the record, is chief of

1 staff for Senator Uresti. And you can see from the top that
2 he's printed out this e-mail as -- as within the purview of the
3 subpoena that was issued.

4 And, essentially, this is a document that was
5 considered by Senator Uresti's staff as part of their privilege
6 -- as part of their deliberative process, and as such we would
7 assert the legislative privilege and say that they cannot
8 establish any relevance of Ms. Haltom's opinion to any issue in
9 this case.

10 **THE COURT:** Okay.

11 **MR. TATUM:** And, your Honor, the State would respond
12 that, though this -- though this document was created after the
13 enactment of SB 14 and its passage, it allows for inferences
14 related to the intent of those legislators who opposed SB 14
15 during its consideration.

16 And, again, for reasons already articulated, we
17 believe that's highly relevant to this case.

18 **THE COURT:** Okay. The Court finds this document is
19 protected by the legislative privilege and is going to grant
20 the Protective Order.

21 So we're on to --

22 **MS. LONDON:** The next document is CU PRIV 000154.
23 And this is an e-mail dated January 24th, 2011, from Brandon
24 Dudley, who is legal counsel for Senator Ellis, and he is
25 giving his opinion and his advice to the democratic staff

1 members for the democratic senators. And this was part of what
2 went into their thought process and their legislative strategy,
3 and we assert the legislative privilege.

4 **THE COURT:** All right. Anything else?

5 **MR. TATUM:** Your Honor, the State believes that this
6 document is particularly relevant, especially given that it was
7 created at the beginning of the consideration of SB 14 during
8 2011.

9 It also references specific amendments being
10 considered -- excuse me -- by Senator Ellis, amendments that
11 I'd referred to previously, showing that, you know, the
12 legislative process that creates any bill is a complex and
13 intertwined matter.

14 And for that reason, the intents of legislators who
15 oppose SB 14 is no less relevant than those who support it.

16 So, for that reason, the State believes this document
17 is highly relevant.

18 **THE COURT:** The Court finds the documents is
19 protected by the legislative privilege and is going to grant
20 the Protective Order on 154.

21 **MS. LONDON:** The next document, CU PRIV 000188, is a
22 duplicate --

23 **THE COURT:** Yeah.

24 **MS. LONDON:** -- on the first part. In other words,
25 if you look at the bottom --

1 **THE COURT:** Uh-huh.

2 **MS. LONDON:** -- of the previous document, the e-mail
3 from Harold Cook to the Senate staff, it's the same -- same
4 e-mail at the top of 188.

5 **THE COURT:** Yeah, I've just read the rest of it. The
6 Court is going to also hold that that's protected by the
7 legislative privilege and grant the Protective Order.

8 So we are down to Whitmire?

9 **MS. LONDON:** That is correct.

10 **THE COURT:** Okay. What is -- and I have all that
11 stapled together?

12 **MS. LONDON:** It is one document.

13 **THE COURT:** It's kind of one we've already seen,
14 correct, or no -- or looks --

15 **MS. LONDON:** It is. I believe it is. It's the same
16 as Zaffirini 545, 555.

17 **THE COURT:** Okay. So same thing, appears to be.
18 Same ruling, then, protected by the privilege and Protective
19 Order is granted.

20 And that is all I have. So I'm going to return what
21 you gave to the Court to review.

22 **MS. LONDON:** And, Judge, the final agreement I have
23 with the State is they have agreed that if any of these
24 legislative privilege or any of the discovery issues are
25 appealed, that they will provide me notice of the appeal.

1 **MR. SCOTT:** That's correct. And we're also on the
2 record -- and I think we said this at the front end -- we're
3 going to submit -- before we submit our offer of proof on these
4 documents to the Court, which the Court will place under seal,
5 is our understanding --

6 **THE COURT:** Yes.

7 **MR. SCOTT:** -- we'll submit those to Ms. London for
8 her review and approval before we do so.

9 **THE COURT:** Uh-huh.

10 **MR. SCOTT:** The last thing -- I just want to make
11 sure, the documents in the two universes of Exhibits 3 and I
12 think 4 --

13 **THE COURT:** And I'm going to admit those exhibits, if
14 I didn't. I have them here, 1, 2, 3, and 4, for the --

15 **MR. SCOTT:** So the --

16 **THE COURT:** -- for the purposes of this hearing.

17 (**Exhibits Numbers 1, 2, 3, and 4 were received in**
18 **evidence**)

19 **MR. SCOTT:** May I take a quick --

20 **THE COURT:** Yes.

21 **MR. SCOTT:** -- quick peak at -- and, your Honor, the
22 documents that the Court has not ruled on that are contained on
23 Exhibit 3, it is my understanding that counsel for the senators
24 is going to execute a declaration depending upon which offices
25 it is will have those executed to prove those documents up for

1 purposes of the business records for authentication.

2 They have not otherwise been ruled upon here.

3 **MS. LONDON:** The agreement provides that we will
4 authenticate to the extent possible.

5 **MR. SCOTT:** Yeah.

6 **MS. LONDON:** Paragraph 7 of our agreement says that
7 the senators or the appropriate person from the senator's staff
8 will authenticate the document to the extent possible.

9 We will abide by that agreement.

10 **MR. SCOTT:** Well, and I -- that's correct. And we
11 just -- there were some other documents that were produced that
12 were not subject to -- no assertions of privileges, and there
13 were no agreements to the limitation of those documents.

14 And I just want to make sure that was true on the
15 record?

16 **MS. LONDON:** That's Exhibit Number 1 --

17 **MR. SCOTT:** Yes.

18 **MS. LONDON:** -- are the documents produced --

19 **THE COURT:** Okay.

20 **MS. LONDON:** -- without objection --

21 **THE COURT:** You all have --

22 **MS. LONDON:** -- or privilege.

23 **THE COURT:** -- copies of these exhibits?

24 **MS. LONDON:** Yes, I have --

25 **THE COURT:** Or do you need --

1 **MS. LONDON:** I have provided that --

2 **THE COURT:** Do you have a copy? Okay.

3 **MS. LONDON:** I have provided that to Mr. Scott.

4 **THE COURT:** Okay. So are we finished with this
5 matter, then? Okay.

6 **MR. SCOTT:** Yes, ma'am.

7 **THE COURT:** Thank you. You're excused.

8 **MR. SCOTT:** There is one other thing that doesn't
9 have to do with that issue, but there is --

10 **THE COURT:** Okay. The only thing is I don't know if
11 we have a Plaintiff here.

12 **MR. SCOTT:** Oh, that's right. We don't.

13 **THE COURT:** But we can get somebody --

14 **MR. SCOTT:** This is even better.

15 **THE COURT:** -- on the line.

16 **MR. SCOTT:** This is perfect.

17 **THE COURT:** And --

18 **THE CLERK:** Mr. Dunn, are you still present on the
19 line?

20 **THE COURT:** Ms. London, you --

21 **MR. DUNN:** Yes.

22 **THE COURT:** Oh, okay.

23 **MR. DUNN:** Yes, I am.

24 **THE COURT:** Who is?

25 **THE CLERK:** Mr. Dunn is on the line.

1 **THE COURT:** Mr. Dunn, all right.

2 **THE CLERK:** Mr. Dunn.

3 **THE COURT:** Very good, then. Go ahead.

4 **MR. SCOTT:** Your Honor, there are some -- there's
5 some documents that are in the custody of the Secretary of
6 State's Office that they received from different counties,
7 where someone identifies himself as a non-U.S. citizen that
8 has registered to vote. There is a process by which they can
9 identify themselves to the local counties.

10 That information is then sent to the Secretary of
11 State's Office on a, I think, a monthly basis, or as -- ad hoc
12 basis, once they -- those persons are identified.

13 We do not want to -- during the course of the trial,
14 that information may be attempted to be used on some of the
15 cross-examination of the witnesses. It's thousands of people.
16 It should be confidential. And I don't want to throw somebody
17 unnecessarily out there.

18 Is there -- is that something that the Court
19 envisions would be covered under the Protective Order? Is
20 there a process by which we can redact the names of any
21 individuals?

22 **THE COURT:** Have you --

23 **MR. SCOTT:** House --

24 **THE COURT:** You all haven't talked about this yet
25 with --

1 **MR. SCOTT:** I have not visited with --

2 **THE COURT:** Mr. Dunn, do you --

3 **MR. SCOTT:** -- the other side.

4 **THE COURT:** -- do you see an issue with --

5 **MR. DUNN:** We have not talked about it yet. No, I
6 don't see an issue with --

7 **THE COURT:** Yeah.

8 **MR. SCOTT:** Okay.

9 **MR. DUNN:** I think we just need to talk to the State
10 about this, but I'm sure we can work out an arrangement.

11 **MR. SCOTT:** Okay.

12 **THE COURT:** Okay. Why don't you all visit? I -- it
13 doesn't sound like that should be a problem, doing what we need
14 to do to --

15 **MR. SCOTT:** Thank you, your Honor.

16 **THE COURT:** -- protect that. Okay. So --

17 **MR. SCOTT:** That's part of --

18 **THE COURT:** And we're going to be on at 1:30, right,
19 to address some other matters?

20 **MR. SCOTT:** I believe that's with Mr. D'Andrea and
21 Mr. Freeman.

22 **THE COURT:** Okay.

23 **MR. SCOTT:** Thank you, your Honor.

24 **THE COURT:** Thank you.

25 **MR. TATUM:** Thank you.

1 **COURT REPORTER:** Can I ask you to just get --

2 **THE COURT:** Hold on one second. Do you need
3 something, Genay?

4 **COURT REPORTER:** Yes, a clarification on the
5 transcript of the sealed portion. I have multiple parties --

6 **THE COURT:** You can ask them.

7 **COURT REPORTER:** I have multiple parties ordering the
8 transcript from yesterday and then today's hearing. The sealed
9 portion, we can't -- do you want it filed under seal and then
10 included in the transcripts in the ordering party, or do you
11 want it left out of the transcript completely, the sealed
12 portion?

13 **MR. SCOTT:** I'm agreeable to whatever Ms. London --

14 **MS. LONDON:** I would like it left out of the
15 transcript.

16 **COURT REPORTER:** Okay.

17 **MR. SCOTT:** We're in agreement with that.

18 **THE COURT:** So will the transcript reflect that we
19 have sealed something --

20 **COURT REPORTER:** Sealed a portion --

21 **THE COURT:** A portion of it? Yeah.

22 **COURT REPORTER:** Yes, it will get to that part and it
23 will say "sealed portion," and then we'll just leave it out,
24 and it will not be filed under seal --

25 **MR. SCOTT:** If that's --

1 **COURT REPORTER:** Okay.

2 **THE COURT:** Thank you.

3 **MR. SCOTT:** If that's her request, that's --

4 **MS. LONDON:** Perfect.

5 **MR. SCOTT:** -- we're perfect to join it.

6 **COURT REPORTER:** Thank you.

7 **THE COURT:** All right.

8 **MS. LONDON:** Thank you.

9 **MR. SCOTT:** Thank you.

10 **THE COURT:** Mr. Donnell?

11 **MR. DONNELL:** Your Honor, I have a problem unique to
12 me. This is the best place in the courtroom to listen. Do you
13 have any objections if I sit there from time to time?

14 **THE COURT:** It shouldn't be a problem. I've got a
15 couple of clerks that are probably going to be sitting right in
16 here. We may pull out a couple of those chairs and put little
17 tables there. We're trying to figure out what we're going to
18 do.

19 It shouldn't be a problem at all --

20 **MR. DONNELL:** Well, I --

21 **THE COURT:** -- but let me kind of figure out how
22 we're going to set up here.

23 **MR. DONNELL:** You could --

24 **THE COURT:** So --

25 **MR. DONNELL:** You could hear --

(This proceeding was adjourned at 10:44 a.m.)

CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.



August 29, 2014

TONI HUDSON, TRANSCRIBER